



UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/086,857 05/29/98 FREDERICK D D-1093

PM92/1107

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EXAMINER

BUTLER, M

ART UNIT

PAPER NUMBER

3651

DATE MAILED:

11/07/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

# Advisory Action

Application No.  
09/086,857

Applicant(s)  
Fr derick et al.

Examiner  
Michael E. Butler

Group Art Unit  
3651



THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Sep 27, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☐ The proposed amendment(s):
- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
  - ☐ will not be entered because:
    - ☐ they raise new issues that would require further consideration and/or search. (See note below).
    - ☐ they raise the issue of new matter. (See note below).
    - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
    - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

- ☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

It is effective in overcoming the 102(e) based anticipatory and obviousness rejections of claim 45 as evidenced by Higham 456. The affidavit was effective in overcoming the rejections to claim 45 in view of Lavigne & Lavigne/Aten.

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: 1-3, 24-36, and 45-47

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☒ Other All elements relied upon in the rejection as evidenced by Pearson '232 were present in Pearson '029 which had an 8/29/91 filing date and an 11/8/89 priority date. The 102 rejections in view of Colson '297 are maintained. The rejection of Blechl /Weinberger is maintained. Claim 24 is not entitled to the benefit of the 12/16/94 CIP priority date for new matter contained therein. All other rejections are maintained. Further, res judicata ought control claim 45 via applicant's Appeal A992631 decided by the Board 5/14/00

Attachment(s)

- ☒ Notice of References Cited. PTO-892

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